

REMARKS

The Office Action dated June 30, 2005 has been received and carefully studied.

The Examiner requests that item (3) in claim 1 be renumbered to (2). By the accompanying amendment, the sub-numbering has been deleted.

The Examiner maintains the rejection of claims 1 and 3-5 under 35 U.S.C. §112, second paragraph, as being indefinite. The Examiner continues to object to the term "under a stringent condition". The Examiner acknowledges the example of a stringent condition set forth in the specification, but states that the specification does not adequately define the stringent conditions with a reasonable degree of certainty.

By the accompanying amendment, the term objected to has been deleted.

The Examiner also maintains the rejection of claims 1 and 3-5 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The Examiner states that the base claim 1 as currently construed still reads on the entire p51 gene comprising SEQ ID NO:1 plus a native enhancer region controlling the transcription of the coding region. The Examiner cites Darnell et al. as teaching that a gene also includes the enhancer, and notes

that the specification does not disclose any enhancer element of the p51 gene. The Examiner also notes that the claimed genus with p51 promoter activity is not adequately described since the term "under stringent condition" is not clear. The Examiner states that only the isolated nucleic acid comprising SEQ ID NO:1 and 2 meets the written description requirement.

By the accompanying amendment, claim 1 has been amended to an isolated gene encoding the p51 promoter region having the base sequence as set forth in SEQ ID NO: 1. It is believed that the amendment overcomes the rejection.

The Examiner maintains the rejection of claims 1 and 3-5 under 35 U.S.C. §102(b) as being anticipated by GenBank Acc. No. AQ168656. The Examiner states that the nucleotide sequence disclosed in GenBank Acc. No. AQ168656 does contain TATA box at Row 6, right half of page 2 of the sequence alignment. The Examiner cites Voet et al. as teaching that TATAAT is a classic TATA or Goldberg-Hogness box. The Examiner also reiterates that GenBank Acc. No. AQ168656 is 90.9% identical from nucleotides 672 to 1171 of the instant SEQ ID NO:2. The Examiner also maintains the rejection of claims 1 and 5 under 35 U.S.C. §102(b) as being anticipated by Yang et al. The Examiner states that the previous argument that Yang et al. do not disclose DNA sequences is

not persuasive because the claims are not limited to SEQ ID NO:1 but also include a gene that hybridizes to SEQ ID NO:1 under an unspecified stringent condition.

By the accompanying amendment, claim 1 has been limited to an isolated gene encoding the p51 promoter region having the base sequence as set forth in SEQ ID NO: 1. It is believed that the amendment overcomes the rejections.

The amendment is only now being made in order to expedite allowance.

Reconsideration, entry of the amendment, and allowance are respectfully requested in view of the foregoing.

Respectfully submitted,


Kevin S. Lemack
Reg. No. 32,579
176 E. Main Street - Suite 7
Westboro, Massachusetts 01581
Tel: (508) 898-1818